

**SCHEDULE “D”  
INDEPENDENT ASSESSMENT PROCESS (IAP)  
FOR CONTINUING INDIAN RESIDENTIAL SCHOOL ABUSE CLAIMS**

**TABLE OF CONTENTS**

	<b>Page(s)</b>
The Continuing Claims	2
The Compensation Rules	3-6
Assessment Process Outline	7-15
Core assumptions	7
Resolution processes	8-9
Safety and support	9
Materials for adjudicators	9
Procedure---General	9-10
Procedure---Treatment reports and expert evidence	11-12
Involvement of alleged perpetrators	12
Burden of proof and evidentiary standards	12-13
Solemnity	13
Setting	13
Decision	13
Review	14
Consistency	14
Specialization	14-15
Privacy	15
Self-represented Claimants	15
Agents	15
IAP Oversight Committee	16
Chief Adjudicator	17
IAP Secretariat	17
Appendix I: The application	18
Appendix II: Acceptance of application	19-20
Appendix III: Involvement of alleged perpetrators	21-22
Appendix IV: Information collection and hearing participation	23
Appendix V: Criteria for adjudicators	24
Appendix VI: Consolidation re medical and expert evidence	25-27
Appendix VII: Claimant documents	28-29
Appendix VIII: Crown documents	30
Appendix IX: Instructions for adjudicators	31-38
Appendix X: Extra-curial knowledge	39-42
Appendix XI: Transition and priorities	43-44
Appendix XII: Format for decisions	45-46
Appendix XIII: Appointments and transition	47-49
Appendix XIV: Application Form	50-67

CONSOLIDATED IAP FOR CONTINUING IRS ABUSE CLAIMS

I: COMPENSABLE ABUSE

The following categories of claims are compensable within this IAP.

1. Sexual and physical assaults, as particularized in the Compensation Rules and Instructions below, arising from or connected to the operation of an IRS, whether or not occurring on the premises or during the school year, committed by adult employees of the government or a church entity which operated the IRS in question, or other adults lawfully on the premises, where the Claimant was a student or resident, or where the Claimant was under the age of 21 and was permitted by an adult employee to be on the premises to take part in authorized school activities.
2. Sexual or physical assaults, as particularized in the Compensation Rules and Instructions below, committed by one student against another at an IRS where:
  - a) the Claimant proves that an adult employee of the government or church entity which operated the IRS in question had or should reasonably have had knowledge that abuse of the kind alleged was occurring at the IRS in question during the time period of the alleged abuse, and did not take reasonable steps to prevent such abuse; or,
  - b) in a case in which the proven assault is a predatory or exploitative sexual assault at the SL4 or SL5 level, the defendants do not establish on a balance of probabilities that reasonable supervision was in place at the time.
3. Any other wrongful act or acts committed by adult employees of the government or a church entity which operated the IRS in question, or other adults lawfully on the premises, which are proven to have caused serious psychological consequences for the Claimant, as particularized in and causing the harms set out in the Compensation Rules and Instructions below. These claims are referred to in this document as “other wrongful acts”

For the purposes of this document, the above claims are collectively referred to as the “continuing claims”.

II: COMPENSATION RULES

	Acts Proven	Compensation Points
SL5	<ul style="list-style-type: none"> <li>Repeated, persistent incidents of anal or vaginal intercourse.</li> <li>Repeated, persistent incidents of anal/vaginal penetration with an object.</li> </ul>	45-60
SL4	<ul style="list-style-type: none"> <li>One or more incidents of anal or vaginal intercourse.</li> <li>Repeated, persistent incidents of oral intercourse.</li> <li>One or more incidents of anal/vaginal penetration with an object.</li> </ul>	36-44
SL3	<ul style="list-style-type: none"> <li>One or more incidents of oral intercourse.</li> <li>One or more incidents of digital anal/vaginal penetration.</li> <li>One or more incidents of attempted anal/vaginal penetration (excluding attempted digital penetration).</li> <li>Repeated, persistent incidents of masturbation.</li> </ul>	26-35
PL	<ul style="list-style-type: none"> <li>One or more physical assaults causing a physical injury that led to or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required. Examples include severe beating, whipping and second-degree burning.</li> </ul>	11-25
SL2	<ul style="list-style-type: none"> <li>One or more incidents of simulated intercourse.</li> <li>One or more incidents of masturbation.</li> <li>Repeated, persistent fondling under clothing.</li> </ul>	11-25
SL1	<ul style="list-style-type: none"> <li>One or more incidents of fondling or kissing.</li> <li>Nude photographs taken of the Claimant.</li> <li>The act of an adult employee or other adult lawfully on the premises exposing themselves.</li> <li>Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student.</li> </ul>	5-10
OWA	<ul style="list-style-type: none"> <li>Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher.</li> <li>Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level.</li> </ul>	5-25

Level of Harm	Consequential Harm	Compensation Points
H5	<p><b>Continued harm resulting in serious dysfunction.</b>  <u>Evidenced by:</u> psychotic disorganization, loss of ego boundaries, personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting therefrom, self-injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders.</p>	20-25
H4	<p><b>Harm resulting in some dysfunction.</b>  <u>Evidenced by:</u> frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders.</p>	16-19
H3	<p><b>Continued detrimental impact.</b>  <u>Evidenced by:</u> difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post-traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury.</p>	11-15
H2	<p><b>Some detrimental impact.</b>  <u>Evidenced by:</u> occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.</p>	6-10
H1	<p><b>Modest Detrimental Impact.</b>  <u>Evidenced by:</u> Occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem.</p>	1-5

<b>Aggravating Factors</b> Add 5-15% of points for Act and Harm combined (rounded up to nearest whole number)
Verbal abuse
Racist acts
Threats
Intimidation/inability to complain; oppression
Humiliation; degradation
Sexual abuse accompanied by violence
Age of the victim or abuse of a particularly vulnerable child
Failure to provide care or emotional support following abuse requiring such care
Witnessing another student being subjected to an act set out on page 3
Use of religious doctrine, paraphernalia or authority during, or in order to facilitate, the abuse.
Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal)

Future Care	Additional Compensation (Dollars)
General – medical treatment, counselling	up to \$10,000
If psychiatric treatment required, cumulative total	up to \$15,000

Consequential Loss of Opportunity		Additional Compensation (Points)
OL5	Chronic inability to obtain employment	21-25
OL4	Chronic inability to retain employment	16-20
OL3	Periodic inability to obtain or retain employment	11-15
OL2	Inability to undertake/complete education or training resulting in underemployment, and/or unemployment	6-10
OL1	Diminished work capacity – physical strength, attention span	1-5

Compensation Points	Compensation (\$)
1-10	\$5,000-\$10,000
11-20	\$11,000-\$20,000
21-30	\$21,000-\$35,000
31-40	\$36,000-50,000
41-50	\$51,000-\$65,000
51-60	\$66,000-\$85,000
61-70	\$86,000-\$105,000
71-80	\$106,000-\$125,000
81-90	\$126,000-\$150,000
91-100	\$151,000-\$180,000
101-110	\$181,000-\$210,000
111-120	\$211,000 to \$245,000
121 or more	Up to \$275,000

Proven Actual Income Loss

Where actual income losses are proven pursuant to the standards set within the complex issues track of this IAP, an adjudicator may make an award for the amount of such proven loss up to a maximum of \$250,000 in addition to the amount determined pursuant to the above grid, provided that compensation within the grid is established without the allocation of points for consequential loss of opportunity. The amount awarded for actual income loss shall be determined using the legal analyses and amounts awarded in court decisions for like matters.

### III. ASSESSMENT PROCESS OUTLINE

#### **a. Core Assumptions as to Legal and Compensation Standards**

- i. All Eligible CEP Recipients will, by the terms of the Approval Orders, be deemed to have released the defendants for all claims arising from their IRS attendance or experience, subject to retaining the right to resolve within this IAP their continuing claims for IRS abuse.
- ii. This outline assumes that the parties have legal representation. See below for procedural modifications where Claimants represent themselves. The defendants may be represented by their employees on the same basis as by counsel.
- iii. Standards for compensable wrongs and for the assessment of compensation have been defined for this IAP. The adjudicator is bound by those standards.
- iv. The compensation rules set the ranges of compensation to be paid having regard to the objective seriousness of the proven act(s) and the subjective impact of proven aggravating factors and harms, as defined. An award can also be made to assist with future care.
- v. Adjudicators are, subject to rights of review, empowered to make binding findings on credibility, liability and compensation within the standards set for the IAP.
- vi. Where compensation is awarded to a Claimant who has been represented by counsel, a further 15% of the amount paid will be added as a contribution towards legal fees. Reasonable and necessary disbursements will also be paid. Adjudicators may resolve disputes about the disbursements to be paid.
- vii. Where a review is sought by counsel for a Claimant who was unrepresented at the initial hearing, and the review is successful, an amount equal to 15% of the compensation obtained on the review beyond the initial award will be paid as a contribution towards the Claimant's legal fees for the review. Reasonable and necessary disbursements for the review will also be paid, with the review adjudicator having jurisdiction to resolve any dispute as to disbursements.

**b. Resolution Processes within this IAP**

- i. This IAP consists of a standard track, a complex issues track, and a provision for access to the courts for the resolution of certain of the continuing claims as set out below.
- ii. The complex issues track is for those continuing claims where the Claimant seeks an assessment of compensation for proven actual income losses resulting from continuing claims, and for other wrongful act claims (category OWA on page 3).
- iii. At the request of a Claimant, access to the courts to resolve a continuing claim may be granted by the Chief Adjudicator where he or she is satisfied that:
  - there is sufficient evidence that the claim is one where the actual income loss or consequential loss of opportunity may exceed the maximum permitted by this IAP;
  - there is sufficient evidence that the Claimant suffered catastrophic physical harms such that compensation available through the courts may exceed the maximum permitted by this IAP; or,
  - in an other wrongful act claim, the evidence required to address the alleged harms is so complex and extensive that recourse to the courts is the more appropriate procedural approach.

In such cases, the Approval Orders will exempt the continuing claims from the deemed release, and thereafter the matter shall be addressed by the courts according to their own standards, rules and processes.

- iv. Both tracks within the IAP utilize the inquisitorial model, as defined below.
- v. In the standard track, consequential harms and consequential loss of opportunity must be proven on a balance of probabilities and then proven to be plausibly linked to one or more acts proven. A finding of a plausible link does not require the negation of other potential causes of harms, but it must be based on or reasonably inferred from the evidence led in the case rather than assumptions or speculation as to possible links. Adjudicators shall have regard to their powers under Appendix X, below
- vi. In the complex issues track, consequential harms, consequential opportunity losses and actual income losses must be proven to have been caused by one or more continuing claims, and compensation must be assessed within the Compensation Rules, in both matters according to the same standards a court would apply in like matters.
- vii. In the standard track, when a case is ready to proceed to a hearing, the government and the Claimant may attempt to resolve the claim without a hearing, using a procedure acceptable to them for the case in question. At the request of the parties, the IAP Secretariat may assign an adjudicator to assist with efforts to resolve the claim.
- viii. In the complex issues track:
  - After the IAP Secretariat has determined that a case is ready to proceed to a hearing, the Claimant shall attend a preliminary case assessment hearing and answer an adjudicator's questions. The purpose of such a hearing is to provide for a preliminary assessment of credibility, and to ensure that there is a *prima facie* basis to support a claim of the nature for which the



complex track is designed. Any answers given in these proceedings are on a without prejudice basis, shall not be recorded or transcribed, and are not admissible in other phases of the hearing.

- Provided the *prima facie* basis has been made out, the adjudicator shall arrange for expert assessments as required by the standards set in this IAP.
- On the receipt of the expert and/or medical evidence or at any point if such have been waived, the government and the Claimant may attempt to settle the claim having regard to the available evidence, the preliminary assessment of credibility, and all other evidence, or the claim may proceed to a hearing.

### **c. Safety and Support**

- i. Reasonable costs for support persons for Claimants to travel to hearings will be paid.
- ii. Counsellors, or at least ready access to counselling services, will be available for the hearing process.
- iii. Cultural ceremonies such as an opening prayer or smudge will be incorporated at the request of the Claimant to the extent possible.

### **d. Materials for Adjudicator for Individual Cases**

- i. The IAP Secretariat will provide the adjudicator with relevant documents and witness statements (as submitted by the parties), two weeks before hearings to facilitate structured questioning.
- ii. Before a hearing counsel may identify particular areas of concern or issues that they believe require extra scrutiny and may provide suggested questions. The adjudicator retains discretion on the wording of the questions put to a witness, but must explore the area proposed by counsel unless the adjudicator rules it to be irrelevant to credibility, liability or compensation in the IAP.

### **e. Procedure---General**

- i. This IAP uses a uniform inquisitorial process for all claims to assess credibility, to determine which allegations are proven and result in compensation, to set compensation according to the Compensation Rules, and to determine actual income loss claims.
- ii. In this inquisitorial model, the adjudicator is responsible for managing the hearing, questioning all witnesses (other than experts retained by the adjudicator) and preparing a decision with his or her conclusions and reasons.
- iii. The adjudicator's questioning must both draw out the full story from witnesses (leading questions are permitted where required to do this), and test the evidence that is given (questioning in the form of cross examination is permitted where required to do this).

- iv. The role is inquisitorial, not investigative. This means that while the adjudicator must bring out and test the evidence of witnesses, only the parties may call witnesses or produce evidence, other than expert evidence.
- v. The Claimant and the alleged perpetrator may give their evidence in their own words in narrative form and are subject to questioning by the adjudicator. Refusal to answer questions may result in finding that answers would have been detrimental to the witness's position.
- vi. The Claimant may read a prepared statement, but this may impact credibility.
- vii. The Claimant may refer to their own notes as long as the notes are produced to counsel for the defendants two weeks in advance. Notes are not evidence.
- viii. The Claimant may refer to documents that are before the adjudicator.
- ix. Where counsel attend hearings, they may meet with the adjudicator at intervals to suggest questions or lines of inquiry. The adjudicator must explore the proposed lines of inquiry unless he or she rules them to be irrelevant to credibility, liability or compensation in the IAP, but the adjudicator retains discretion on the wording of the questions put to a witness.
- x. The parties may require the adjudicator to hear any witness who is willing to appear and who has evidence relevant to credibility, liability or compensation within the IAP, other than a medical professional or an expert witness on the issue of consequential harms, consequential loss of opportunity, or actual income loss, provided notice and a witness statement are given two weeks before the hearing. Criteria for the use of expert witnesses are set out in section (f) and Appendix VI, below.
- xi. Since witnesses cannot be compelled to appear, no adverse inference is to be drawn from the failure to produce a witness who may have relevant evidence, but the report of a treatment professional may be given less weight if they are available but refuse to testify.
- xii. Alleged perpetrators may be heard as of right, provided the parties are advised in advance of what their evidence will be.
- xiii. Except as required to obtain medical or expert evidence, or otherwise as provided for in this IAP, hearings should be adjourned only in very exceptional circumstances, for example where the evidence of the Claimant differs so substantially from the application that it amounts to a new application.
- xiv. At the conclusion of the evidence, counsel for the parties, if participating, may make brief oral submissions.
- xv. Where compensable abuse is proven, compensation is awarded for acts and, if the applicable evidentiary threshold is crossed, compensation is also awarded for impacts as set out in the Compensation Rules. Unless the parties consent, expert evidence is required to establish consequential harms or consequential loss of opportunity at levels 4 or 5, or actual income loss. Such evidence may only be obtained where the adjudicator is satisfied that it is justified and necessary, or where the parties have made a joint recommendation that it be obtained.

**f. Procedure---Treatment Reports and Expert Evidence (see consolidation in Appendix VI)**

- i. Treatment notes and clinical records are admissible to prove that the treatment was given and observations were made, but not as proof of diagnoses of psychological conditions or the opinion leading to them. Such notes and records may also be used to provide evidence of the fact of a physical injury. They may also be used by the adjudicator as the basis for lines of questions, the answers to which could provide the basis for findings of consequential harms or consequential loss of opportunity at levels 1-3. They may also support a finding of consequential harms or consequential loss of opportunity at levels 4 or 5 where the parties consent to proceeding without expert reports.
- ii. If treatment notes and clinical records from treating doctors or counsellors are not available, Claimants may submit reports from treating doctors or counsellors for the same purposes, without the requirement of defence medicals, but the defendants may require the treatment professional to testify. If the treatment professional is not available, or is available but will not testify, a report remains admissible, but the adjudicator may give it less weight.
- iii. Unless the parties consent, an adjudicator shall not make a finding of a physical injury for the purposes of this IAP without obtaining and considering medical evidence as to the timing, causation, and continuing impact of such injury. Where such evidence is not contained in treatment notes or clinical records, or treatment reports admitted into evidence, the adjudicator shall ask the Claimant to submit to an examination by an appropriate medical professional. Provided the Claimant has submitted to the medical assessment, as required, the adjudicator shall decide the issue having regard to the available evidence and the standard of proof, including where the results of the medical assessment are inconclusive.
- iv. Except on consent, points within the compensation rules for consequential harms or consequential loss of opportunity above level 3, or compensation for actual income loss, may only be awarded where the adjudicator has obtained and considered expert assessments of the extent and causation of the harms or losses, or medical evidence as to the timing, causation and continuing effect of the alleged physical harms.
- v. Where the Claimant is seeking compensation based on psychological harms at level 4 or 5 of the consequential harms or consequential loss of opportunity at levels 4 or 5 or actual income loss caused by psychological harms:
  - The Claimant so indicates in the application
  - The adjudicator has discretion to order an assessment by an expert. Only the adjudicator may order such assessments, and unless the parties have made a joint recommendation for such an assessment before the hearing, only after hearing the claim and making findings as to credibility, and determining that the assessment is justified by the evidence accepted and is necessary to assess compensation fairly.
  - Where an assessment is ordered, the adjudicator retains and instructs an expert from a roster approved by the IAP Oversight Committee. The expert prepares a report which is tabled before the adjudicator.

- Counsel for the parties may require that the expert give oral evidence and that they be allowed to question the expert at the hearing and make submissions.
  - When the parties consent to the adjudicator considering the assignment of points within those ranges, or actual income loss, without the benefit of an expert assessment, such consent does not eliminate the need for the adjudicator to be satisfied, on the civil standard of proof, that the Claimant suffers from those harms, and that they are linked to proven abuses at the IRS according to the standards in this IAP.
- vi. In the complex issues track where a claim for actual income loss is being advanced, the adjudicator shall order psychiatric and medical reports as outlined above or any other expert reports required to assess and evaluate the claim.

**g. Procedure--Involvement of Alleged Perpetrator At Hearing**

- i. An alleged perpetrator is to be heard as of right, provided the parties are advised in advance of what their evidence will be. The alleged perpetrator must submit a statement of their proposed evidence two weeks before the hearing; if they do not, counsel must share their notes, again two weeks before the hearing, of what the alleged perpetrator said when interviewed.
- ii. Normally the alleged perpetrator will be heard after the Claimant. Either can be recalled to resolve a credibility issue, but this should happen rarely.
- iii. The alleged perpetrator does not have a role as a party.
- iv. There is no right of confrontation.
- v. See Appendix III for additional provisions concerning alleged perpetrators.

**h. Burden of Proof and Evidentiary Standards**

- i. Except as otherwise provided in this IAP, the standard of proof is the standard used by the civil courts for matters of like seriousness. Although this means that as the alleged acts become more serious, adjudicators may require more cogent evidence before being satisfied that the Claimant has met their burden of proof, the standard of proof remains the balance of probabilities in all matters.
- ii. The adjudicator may receive, and base a decision on, evidence adduced in the proceedings and considered credible or trustworthy in the circumstances.
- iii. The application and witness statements may be used as a basis for questioning at the hearing, and material variations from them may be used in deciding the claim, unless those variations are explained to the adjudicator's satisfaction by progressive disclosure or otherwise.
- iv. At a hearing, the application form may also be used by the Claimant to assist their own recall. While the Claimant may refer to their application at the hearing, it is not evidence (other than of a prior inconsistent statement). This reflects the rules of evidence used by the courts which provide that in general, prior statements of a party can be used as admissions against interest, but not otherwise as evidence of their truth. They can also be used to demonstrate a prior inconsistent statement,

- although in this IAP it is specifically recognized that progressive disclosure is a possible explanation for inconsistencies.
- v. Counsel may agree on foundation and other facts and so advise the adjudicator. Such agreement binds the adjudicator. This is not to prevent the whole narrative being told if the Claimant so wishes.
  - vi. Relevant findings in previous criminal or civil trials, where not subject to appeal, may be accepted without further proof.
  - vii. An adjudicator may permit a witness to give their evidence by video-conference where such facilities are available to them, and may also permit a Claimant to do so where a medical professional provides advice that the Claimant's health prohibits them from travelling to a hearing.
  - viii. A Claimant may adopt their prior recorded statements, provided they remain subject to questioning by adjudicator, and provided that, without the consent of the defendants, a recorded statement is not admissible if it was made for the purpose of seeking redress for the Claimant's IRS experience.
  - ix. Where an alleged perpetrator has given an interview or submitted a witness statement, but thereafter does not appear at a hearing to give evidence, neither the interview notes nor the statement (including any documents submitted with it which are not otherwise admitted in evidence, and whether or not it is in the form of an affidavit) is admissible in evidence at the hearing except to the extent it contains an admission.

**i. Solemnity**

- i. Participants and other witnesses shall give evidence under oath, by affirmation or another way that binds their conscience.

**j. Setting**

- i. Hearings will take place in a relaxed and comfortable setting. Claimant will have a choice of location, subject to hearings being scheduled to promote economy.

**k. Decision**

- i. The adjudicator will produce a decision in a standard format outlining key factual findings and providing a rationale for finding or not finding compensability within the IAP and for the compensation assessed, if any.
- ii. At the conclusion of the hearing, the adjudicator will advise the Claimant that the decision will be provided in writing within 30 days for standard track hearings and within 45 days for complex track hearings.
- iii. The decision will normally be delivered to the Claimant via their counsel, who will be able to access health supports for the Claimant at the time the decision is shared with them.
- iv. Where the Claimant is not represented by counsel, the adjudicator will also inquire at the end of the hearing into how the Claimant would like to receive the

decision, having regard to the desirability of health or family support being available at the time of receipt.

### **l. Review**

- i. For cases within the standard or complex track, any party may ask the Chief Adjudicator or designate to determine whether an adjudicator's, or reviewing adjudicator's, decision properly applied the IAP Model to the facts as found by the adjudicator, and if not, to correct the decision, and the Chief Adjudicator or designate may do so.
- ii. In both the standard and the complex issues tracks, Claimants may require that a second adjudicator review a decision to determine whether it contains a palpable and overriding error.
- iii. In the complex issues track, the defendants may require that a second adjudicator review a decision to determine whether it contains a palpable and overriding error.
- iv. If a palpable and overriding error is found, the reviewing adjudicator may substitute their own decision or order a new hearing.
- v. All reviews are on the record (no new evidence permitted) and without oral submissions.
- vi. The party seeking the review may provide a short written statement of their objections to the decision (not to exceed 1500 words) and the other parties may provide a brief reply (not to exceed 1000 words). In exceptional circumstances the Chief Adjudicator may permit the parties to exceed these limits.
- vii. The reply shall be provided to the party seeking the review, who may seek leave from the Chief Adjudicator to make further submissions, not to exceed 500 words. The application shall be accompanied by the proposed submissions. Leave may be granted only in exceptional cases where the Chief Adjudicator determines that the submissions respond to a significant issue raised for the first time in the reply, or seek to correct a fundamental error of fact or interpretation in the reply.

### **m. Consistency**

- i. Adjudicators may consult each other about the hearing and decision-making processes. They will attempt to conduct consistent sessions and produce decisions in a consistent fashion, and may discuss issues arising in individual cases provided they remain solely responsible for deciding the claims they have heard.
- ii. The Chief Adjudicator shall implement training programs and administrative measures designed to ensure consistency among the decisions of adjudicators in the interpretation and application of the IAP.

### **n. Specialization of Adjudicators**

- i. The Chief Adjudicator shall endeavour to assign adjudicators to cases in a way which facilitates their specialization in one or more schools.

- ii. In assigning adjudicators to cases within the complex issues track, the Chief Adjudicator shall have regard to their experience and/or expertise in like matters. For greater certainty, where an other wrongful act claim involves allegations of physical abuse which was grossly excessive in duration and frequency, the Chief Adjudicator shall have regard to expertise in the assessment of child abuse in the assignment of an adjudicator.

**o. Privacy**

- i. Hearings are closed to the public. Parties, an alleged perpetrator and other witnesses are required to sign agreements to keep information disclosed at a hearing confidential, except their own evidence, or as required within this process or otherwise by law. Claimants will receive a copy of the decision, redacted to remove identifying information about any alleged perpetrators, and are free to discuss the outcome of their hearing, including the amount of any compensation they are awarded.
- ii. Adjudicators may require a transcript to facilitate report writing, especially since they are conducting questioning. A transcript will also be needed for a review, if requested. Proceedings will be recorded and will be transcribed for these purposes, as well as if a Claimant requests a copy of their own evidence for memorialization. Claimants will also be given the option of having the transcript deposited in an archive developed for the purpose.

**p. Self-represented Claimants**

- i. Self-represented Claimants (SRCs) will receive document production and witness statements on the same basis as if represented.
- ii. SRCs will receive notes of what was said at any interview provided by an alleged perpetrator, and a witness statement, if provided.
- iii. SRCs may submit proposed areas for scrutiny and proposed lines of questioning to the adjudicator in advance of a hearing (this will particularly apply where the alleged perpetrator or a defence witness is to give evidence).
- iv. SRCs will receive the defendants' advance submissions to the adjudicator on areas/lines of questioning to be explored.
- v. During a hearing, both SRCs and the defendants may suggest lines of questioning, but this will be done in the hearing room, on the record and in the presence of each other, and SRCs will be allowed to make brief closing submissions.

**q. Representation of Claimants by Agents**

- i. Agents, whether paid by the Claimant or not, may not discharge the roles specifically established for counsel in this IAP.

**r. IAP Oversight Committee**

- i. The Chief Adjudicator Reference Group shall be reconstituted as the IAP Oversight Committee, which shall be composed of an independent chair and 8 other members, two reflecting the interests of each of the following constituencies: former students; plaintiffs' counsel; church entities; government.
- ii. The Committee shall operate by consensus to the greatest extent possible. In the event a vote is required, the Chair may vote, and a majority of seven shall be required to decide an issue, provided that if the issue would increase the cost of the IAP, whether for compensation or procedural matters, one government representative must be among the seven.
- iii. The duties of the Oversight Committee are to:
  - Recruit and appoint, and if necessary terminate the appointment of, the Chief Adjudicator.
  - Provide advice to the Chief Adjudicator on any issues he or she brings to it.
  - Recruit and appoint adjudicators, and approve training programs for them.
  - Approve designates to exercise the Chief Adjudicator's review authority as set out in item l(i) above.
  - On the advice of the Chief Adjudicator, renew or terminate the contract of an adjudicator.
  - Recruit and appoint experts for psychological assessments.
  - Consider any proposed instructions from the Chief Adjudicator on the interpretation and application of the IAP Model, and as appropriate prepare its own instructions or forward proposed instructions from the Chief Adjudicator for approval by the National Administration Committee, provided that:
    - no instruction may alter pages 2-6 of this IAP, nor the interpretation of those pages set out elsewhere in this IAP, nor the provisions of the IAP allocating claims to the standard or complex issues tracks or requiring expert evidence or medical assessments; and,
    - instructions only come into force when approved by the National Administration Committee and published by the Oversight Committee, and only bind participants who have had at least two weeks notice of the instructions before their hearing.
  - Monitor the implementation of the IAP and make recommendations to the National Administration Committee on changes to the IAP as are necessary to ensure its effectiveness over time.



### **s. The Chief Adjudicator**

i) The duties of the Chief Adjudicator are to:

- Assist in the selection of adjudicators.
- Implement training programs and administrative measures designed to ensure consistency among the decisions of adjudicators in the interpretation and application of the IAP.
- Assess on an ongoing basis the other training and mentoring needs of adjudicators and develop appropriate programs.
- Assign adjudicators to hearings and reviews or to assist with settlement discussions.
- Provide advice to adjudicators on compliance with this IAP.
- Prepare for consideration by the Oversight Committee any proposed instructions to better give effect to the provisions of the IAP.
- Receive complaints about the performance of adjudicators and as appropriate meet with adjudicators to discuss concerns and develop remedial actions to resolve same.
- Determine, in his or her exclusive authority, whether to terminate or renew the contract of an adjudicator.
- Conduct reviews as provided for in item l(i) above, or assign such to designates approved by the Oversight Committee.
- Set the policies and standards for the Secretariat and direct its operations.
- Make the final decision on a request by a Claimant for a reconsideration of a decision by the Secretariat that their application to this IAP process fails to allege matters which can be resolved within it.
- Conduct hearings as he or she determines appropriate, provided that designates have been approved for the purpose of item l(i) above.
- Carry out all other functions assigned by this IAP.
- Prepare annual reports to the Oversight Committee on the functioning of the adjudicative process under this IAP.

### **t. Secretariat**

- i. A Secretariat shall be established to support the Chief Adjudicator and to be responsible for determining whether applications fall within the terms of the IAP.
- ii. Where an application fails to raise a claim which falls within the IAP, the Secretariat shall so advise the Claimant, with reasons, and provide them with the opportunity to make a further application. On the request of the Claimant, a decision to refuse to admit a claim into the IAP will be reviewed by the Chief Adjudicator, whose decision will be final.
- iii. The Secretariat shall also recruit and approve a panel of interpreters.
- iv. The Secretariat reports to the Chief Adjudicator.

APPENDIX I: THE APPLICATION

- a) In applying to the IAP, the Claimant is asked to:
- i. List points of claim: indicate by reference to the standards for this IAP each alleged wrong with dates, places, times and information about the alleged perpetrator for each incident sufficient to identify the alleged perpetrator or in the case of adult employees permit the identification of the individual or their role at the school.
  - ii. Provide a narrative as part of the application. The narrative must be in the first person and be signed by the Claimant and can be both a basis for and a subject of questioning at a hearing.
  - iii. Indicate by reference to the Compensation Rules established for this IAP the categories under which compensation will be sought and, where appropriate, indicate that compensation will be sought for consequential harm and/or opportunity loss above level 3, or for actual income loss.
  - iv. Include authorizations so that the defendants may produce their records as set out in Appendix VIII.
  - v. Safety mechanisms will be provided in consultation with Health Canada. Where Claimants are proceeding as a group, they may negotiate to have the group administer the available safety resources.

APPENDIX II: ACCEPTANCE OF APPLICATION

- i. The Secretariat will admit claims to the IAP as of right where the application is complete and sets out allegations which if proven would constitute one or more continuing claims, and where the Claimant has signed the Declaration set out in the application form, including the confidentiality provisions in the Declaration.
- ii. If the case is not admitted into the IAP the Claimant will be advised why and given a chance to provide additional information. At the request of the Claimant, the Chief Adjudicator may review any final decision to refuse to admit an application into the IAP, and may confirm or reverse that decision. If the decision is reversed, the initial and any subsequent applications, or supplementary information, will be given to the adjudicator.
- iii. On admitting the claim to the IAP, the Secretariat shall forward a copy of the application to the Government and to a church entity which is a party to the Class Action Judgments and was involved in the IRS from which the claim arises.
  - A church entity may waive its right to receive applications for all claims, or for defined classes of claims, by notice in writing to the Secretariat, and may amend or withdraw such waiver at any time by notice in writing.
- iv. The following conditions apply to the provision of the application to the Government or a church entity:
  - The application will only be shared with those who need to see it to assist the Government with its defence, or to assist the church entities with their ability to defend the claim or in connection with their insurance coverage;
  - If information from the application is to be shared with an alleged perpetrator, only relevant information about allegations of abuse by that person will be shared, and the individual will not be provided with the Claimant's address or the address of any witness named in the application form, nor with any information from the form concerning the effects of the alleged abuse on the Claimant, unless the Claimant asks that this be provided to the alleged perpetrator;
  - Each person with whom the application is shared, including counsel for any party, must agree to respect its confidentiality. Church entities will use their best efforts to secure the same commitment from any insurer with whom it is obliged to share the application;
  - Copies will be made only where absolutely necessary, and all copies other than those held by the Government will be destroyed on the conclusion of the matter, unless the Claimant asks that others retain a copy, or unless counsel for a party is required to retain such copy to comply with his or her professional obligations.
- v. Once the claim is admitted, counsel may attempt to agree on certain facts to reduce research needs.
- vi. Group claims will be accepted where the individual applications of the group members have been submitted together or within a short interval; each of the Claimants has indicated their desire to proceed as a group member; the applications show commonality among group members (school, community, issues); and a

representative of the group has submitted an application to proceed as a group, demonstrating that:

- the group is an established one with evident viability and decision-making capacity;
  - its members are already providing each other with support in connection with their IRS experiences or have a clear plan and realistic capacity to do so;
  - the issues raised by the individuals within the group are broadly similar; and
  - the group has a clear plan and intention to manage safety resources, where they desire to do so, and to achieve healthy and lasting resolution of their claims.
- vii. Where a proposal to proceed as a group is not accepted, the individuals will be advised of their right to continue as individuals if their applications otherwise meet the criteria for this IAP.

APPENDIX III: INVOLVEMENT OF ALLEGED PERPETRATORS

- i. The defendants will attempt to locate the alleged perpetrator to invite them to the hearing. If the alleged perpetrator is dead, cannot be located, or declines to attend, the hearing may still occur.
- ii. Subject to items (iii) and (iv) below, no hearing may be set to commence until:
  - the Government has had 60 days from its receipt of the screened-in application to attempt to locate the alleged perpetrator, or in the event that contact is first attempted by a church entity with an agreement with the Government providing for a right of first contact, an additional 30 days; and
  - thereafter the alleged perpetrator has had a total of 75 additional days to seek advice on whether to participate, and if so, to provide a witness statement or be interviewed as set out below.
- iii. Where the above-noted events occur prior to the expiry of the time allotted, the Government may so notify the Secretariat, and the Secretariat may schedule a hearing when the matter is otherwise ready to proceed.
- iv. If a Claimant provides medical evidence that any delay in hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony, the Secretariat may schedule a hearing for the limited purpose of taking such testimony, after which the hearing shall be adjourned to allow for the location of the alleged perpetrator and the obtaining of their testimony if they decide to participate.
- v. The alleged perpetrator will be provided with extracts from the application outlining the allegations made against them, to be returned at the conclusion of the process, in order to help them recall the student/incident and to determine their response. Information on the Claimant's current address or the addresses of other potential witnesses will be deleted from this material, as will information on the impacts of the alleged abuse, unless the Claimant asks that it be provided to the alleged perpetrator.
- vi. Notice of the alleged perpetrator's desire to respond to allegations will be given to counsel for the Claimant at the earliest opportunity.
- vii. A witness statement will be requested from the alleged perpetrator. If he or she declines to provide one, counsel for any party may request an interview with the alleged perpetrator. This would not be the equivalent of an examination for discovery, and the interview notes of what he or she said must be shared among the parties two weeks before the hearing, as must a witness statement, if provided.
- viii. The witness statement, or failing that the interview notes, are a condition of the alleged perpetrator being heard by the adjudicator.
- ix. Counsel and a support person for the alleged perpetrator are permitted at a hearing while the alleged perpetrator gives evidence, but the alleged perpetrator or their counsel may not attend at same time and place as the Claimant without the advance consent of the parties. Canada will pay up to \$2500 for the alleged perpetrator to receive legal advice about the implications of giving evidence, plus the reasonable costs of the alleged perpetrator's attendance, and of the attendance of a support person. For greater certainty, support person in this context does not include counsel for an alleged perpetrator.
- x. Where the testimony of the Claimant at a hearing differs materially from the account provided in the application which was shared with the alleged perpetrator, the

adjudicator shall prepare a summary of the new allegations and provide it to the alleged perpetrator and the parties before the alleged perpetrator gives evidence.

- xi. The alleged perpetrator is a witness, not a party.
- xii. The alleged perpetrator is entitled to know the results of the hearing with respect to the allegations against them, but not the amount of any compensation awarded.

APPENDIX IV: INFORMATION COLLECTION; SETTING HEARING DATE;  
ATTENDANCE AND PARTICIPATION AT HEARINGS

- i. The defendants will collect and submit their documents to the Secretariat.
- ii. Claimants will collect and submit their documents and the treatment notes and clinical records they want to rely on, or, where they cannot obtain such notes or records, will indicate the steps taken to attempt to do so.
- iii. Witness statements shall be prepared and submitted by the party calling the witness.
- iv. No date shall be set until the IAP Secretariat is satisfied that exchange of documents, including treatment notes and clinical records is as complete as reasonably necessary, unless a Claimant provides medical evidence that any delay in hearing their testimony involves a significant risk that they may die or lose the capacity to provide testimony. In such circumstances, the Secretariat may schedule a hearing for the limited purpose of taking such testimony, after which the hearing shall be adjourned to allow for the preparation of the case as otherwise provided for in this IAP.
- v. The hearing date will be set based on the availability of the parties, counsel and the adjudicator, and on cost effectiveness having regard to the location and the number of hearings to be held in any one place in a given time frame.
- vi. The Claimant may attend a hearing where the alleged perpetrator gives evidence without that individual's consent. This is based on the Claimant being a party, and needing to be aware of all evidence to raise possible lines of questioning and make submissions if unrepresented, or to instruct counsel if represented.
- vii. Given the non-adversarial nature of this IAP and the neutral, inquisitorial role played by the adjudicators under it, as well as the need to respect the safety of the Claimant, neither an alleged perpetrator nor counsel for an alleged perpetrator may attend while the Claimant gives evidence, without the Claimant's advance consent. Where counsel for a church entity also acts for an alleged perpetrator, this means that they may not attend the hearing while the Claimant gives evidence without the Claimant's advance consent. Government representatives may always attend this part of the hearing, as may representatives of church entities who are parties to the Class Action Judgments except their counsel if he or she is also acting for an alleged perpetrator in the case.
- viii. Support persons attend hearings to help ensure the health and safety of the Claimant during a stressful event. Their focus needs to be on how the Claimant is handling the stress they face. Accordingly support persons should not become distracted from that goal by seeking to become a participant in the proceedings, for example, by attempting to give evidence. If it becomes necessary for a support person to give evidence, they should be sworn (or affirmed) as a witness, but only after the adjudicator is satisfied that appropriate arrangements for the safety of the Claimant are in place.
- ix. Finally, since the central purpose of the hearing is an assessment of credibility, counsel or representatives of any party must refrain from speaking to a witness about the evidence in the case once that witness begins giving evidence and until their evidence is complete. An adjudicator may authorize an exception to this where he or she is of the view that the discussion is necessary to elicit evidence from the witness in a timely manner.

APPENDIX V: CRITERIA FOR THE SELECTION OF ADJUDICATORS

- i. Law degree from a recognized university. Consideration will also be given to candidates with a combination of related training and/or significant experience
- ii. Knowledge of and sensitivity to Aboriginal culture and history
- iii. Knowledge of and sensitivity to sexual and physical abuse issues
- iv. Knowledge of personal injury law
- v. Knowledge of damages assessment
- vi. Ability to interview or examine witnesses
- vii. Ability to elicit useful evidence in a concise manner
- viii. Ability to act in an impartial manner
- ix. Respect for all parties involved
- x. Demonstrated ability to assess credibility and reliability
- xi. The ability to work under pressure and to write clear, concise and well-reasoned decisions that take into account evidence, submissions, the rules and policies of this IAP, within required deadlines
- xii. The ability to work effectively with staff and participants from diverse backgrounds
- xiii. Computer literacy and superior communication and writing skills
- xiv. Personal suitability including an aptitude for adjudication, fairness, good listening skills, open-mindedness, sound judgment, tact, and comfort with complex and/or sensitive issues
- xv. Willingness and ability to travel across Canada or within a designated region, including to First Nations communities, using various modes of transportation
- xvi. Flexibility and availability to be called for hearings on an as required basis



## APPENDIX VI: CONSOLIDATION OF PROVISIONS CONCERNING EXPERT AND MEDICAL EVIDENCE

This IAP seeks to confine the use of expert witnesses to matters where their evidence is essential, and to eliminate the prospect of competing reports from experts on the same issue. This will produce significant savings in cost and time.

This Appendix consolidates and provides additional instructions on the IAP's provisions concerning medical and expert evidence in four categories:

1. Treatment reports
2. Psychiatric assessments
3. Medical assessments
4. Vocational and actuarial assessments.

### 1. Treatment Records

Treatment notes and clinical records prepared in the normal course of the Claimant dealing with their injuries, whether physical or psychological, are admissible as of right to help the adjudicator decide the particular case. In this connection, this IAP provides as follows:

- The Claimant may submit treatment notes and clinical records from treating doctors or counsellors, or if such are not available, a report from treating doctors or counsellors, as of right, subject to notice and disclosure as provided for in this IAP.
- This includes records of and reports from customary or traditional counsellors or healers.
- The defence may not require a defence medical, but may ask that the person who provided the treatment give evidence at the hearing.
- If the person who prepared a treatment report is dead or not available, then the report may be admitted subject to the adjudicator being able to give it less weight
- Where the person who provided the treatment gives evidence, only the adjudicator may question them, and the questioning may explore the treatment professional's qualifications as well as the records and report.
- Treatment notes and clinical records are admissible to prove that the treatment was given and observations were made, but not as proof of diagnoses of psychological conditions or the opinion leading to them. Such notes and records may be used to provide evidence of the fact of a physical injury. They may also be used by the adjudicator as the basis for lines of questions, the answers to which could provide the basis for findings of consequential harms or consequential loss of opportunity at levels 1-3. They may also support a finding of consequential harms or consequential loss of opportunity at levels 4 or 5 where the parties consent to proceeding without expert reports.

## 2. Psychiatric and Psychological Assessments

Assessments prepared for litigation purposes raise different issues. They are very dependent on the information given to the expert as the basis for the report. That information is generally limited to the Claimant's version of events, and can differ from the evidence presented at a hearing, or found credible by the adjudicator. Where the Claimant obtains such an assessment, normally the defendants would as well, quite often leading to a series of complex contradictions between the assessments.

As a result, this IAP adopts a more restrictive approach to assessments. Only the adjudicator may order such assessments, and, unless the parties have made a joint recommendation to the contrary, only after hearing the claim and making preliminary findings as to credibility, and determining that ordering an assessment is justified by the evidence accepted and is necessary to assess compensation fairly. In such circumstances the adjudicator will retain an expert from a roster agreed to by the IAP Oversight Committee, and that expert's assessment will be considered as set out below in assessing compensation. This can only be done where consequential harms or opportunity losses at levels 4 or 5, or actual income losses are in issue.

Except on consent, points within the compensation rules for consequential harms or consequential loss of opportunity above level 3, or compensation for actual income loss, may only be awarded where the adjudicator has obtained and considered an expert's assessment of the extent and causation of the alleged psychological harms (or medical evidence as to the timing, causation and continuing effect of the alleged physical harms: see below).

The following summarizes the approach to psychiatric and psychological evidence:

- An adjudicator has the discretion to order an assessment by an expert. Only the adjudicator may order such assessments, and unless the parties have made a joint recommendation for such an assessment before the hearing, only after hearing the claim and making findings as to credibility, and determining that the assessment is justified by the evidence accepted and is necessary to assess compensation fairly.
- Where an assessment is ordered, the adjudicator retains an expert from a roster approved by the IAP Oversight Committee, and thereafter, the following principles apply:
  - The expert is to be provided with the transcript of the hearing, and any records filed at the hearing that are relevant to the proposed assessment, all on a confidential basis. The parties shall be advised of which records are provided to the expert.
  - The adjudicator is to brief the expert on his or her preliminary findings, so that the assessment may be conducted on the basis of the facts likely to be found, and shall instruct the expert to refrain from making any findings as to credibility.

- The adjudicator shall give significant regard to the expert's opinion on the level of harm and on its causation pursuant to the standards in this IAP.
- After reviewing the expert's report, any party may require that the expert give evidence, and any party may question them.
- When the parties consent to the adjudicator considering the assignment of points within those ranges without the benefit of an expert assessment, such consent does not eliminate the need for the adjudicator to be satisfied, on the civil standard of proof, that the Claimant suffers from those harms, and that they are linked to proven continuing claims according to the standard provided for in this IAP.

### 3. Adjudicator-ordered Medicals to Assess Physical Injuries

- Unless the parties consent, an adjudicator shall not make a finding of a physical injury for the purposes of this IAP without obtaining and considering medical evidence as to the timing, causation, and continuing impact of such injury. Where such evidence is not contained in treatment notes or clinical records admitted into evidence, the adjudicator shall ask the Claimant to submit to an examination by an appropriate medical professional. Provided the Claimant has submitted to the medical assessment, as required, the adjudicator shall decide the issue having regard to the available evidence and the standard of proof, including where the results of the medical assessment are inconclusive.
- The parties shall endeavour to agree on the medical professional who will conduct the assessment. If they cannot, the adjudicator, with the assistance of the Secretariat, shall select an appropriate individual.
- In both circumstances, the professional is to be retained by the Secretariat and shall take instructions from and report to the adjudicator. The retainer shall be conditional on the professional being willing to testify if required.
- Where a report has been obtained, the parties may require that the professional attend the hearing (or its resumption) and give evidence.
- The same standard for questioning will apply here as for treatment reports: the adjudicator does the questioning, and the questioning can explore the examiner's qualifications as well as the records and report.

### 4. Actual Income Loss Assessments

- ◆ In the complex issues track where a claim for actual income loss is being advanced, the adjudicator shall order expert reports or medical assessments as set out above.
- ◆ At the request of a party, the adjudicator shall also order any other expert reports required to assess and evaluate the claim in accordance with the above procedure for obtaining medical assessments.

## APPENDIX VII: MANDATORY DOCUMENT PRODUCTION BY CLAIMANTS

Following the receipt of a completed application form, and the acceptance of an individual into the IAP, relevant documents must be exchanged. This appendix outlines the documents a Claimant must produce, or explain the absence of, as a condition of proceeding to a hearing with a claim seeking particular kinds of compensation within the Compensation Rules.

This appendix does not outline other kinds of documents which could assist a Claimant in proving their claim. These will be admissible as provided for in this IAP. The kinds of documents the defendants will produce are outlined in a separate appendix.

In terms of proving the abuse itself, no documents are required from Claimants, although Claimants are free to produce documents to support their claim.

### 1. TO PROVE CONSEQUENTIAL HARMS

#### LEVELS 3, 4 AND 5

- Treatment records which are relevant to the harms claimed (including clinical, hospital, medical or other treatment records, but excluding records of counselling obtained to help ensure safety while pursuing an IRS claim). In the complex issues track, records from general practitioners, clinics or community health centres are deemed to be relevant unless the defendants consent to the contrary.
- Workers' Compensation records, if the claim is based in whole or in part on a physical injury.
- Corrections records (insofar as they relate to injuries or harms).

#### LEVELS 1 AND 2

None required

### 2. TO PROVE CONSEQUENTIAL LOSS OF OPPORTUNITY

#### LEVELS 3, 4 AND 5

- Workers' Compensation records, if the claim is based in whole or in part on a physical injury.
- Income Tax records (if not available, then EI and CPP records)
- Treatment records which are relevant to the asserted basis for the opportunity loss (including clinical, hospital, medical or other treatment records, but excluding records of counselling obtained to help ensure safety while pursuing an IRS claim). In the complex issues track, records from general practitioners, clinics or community health centres are deemed to be relevant unless the defendants consent to the contrary.

- Secondary (non-residential) school and post-secondary school records.

LEVEL 2

- Workers' Compensation records, if the claim is based in whole or in part on a physical injury.
- Income Tax records, or at the Claimant's choice, EI and CPP records
- Secondary (non-residential) school and post-secondary school records.

LEVEL 1

None required.

3. TO ESTABLISH A NEED FOR FUTURE CARE

None required, but a treatment plan should be submitted to support any claim for future care in any case where the Claimant is represented by counsel or is otherwise in a position to prepare one.

## APPENDIX VIII: GOVERNMENT DOCUMENT DISCLOSURE

The government will search for, collect and provide a report setting out the dates a Claimant attended a residential school. There are several kinds of documents that can confirm attendance at a residential school, and as soon as one or more are found which deal with the entire relevant period, further searches will not be undertaken.

The government will also search for, collect and provide a report about the persons named in the Application Form as having abused the Claimant, including information about those persons' jobs at the residential school and the dates they worked or were there, as well as any allegations of physical or sexual abuse committed by such persons, where such allegations were made while the person was an employee or student.

Upon request, the Claimant or their lawyer will receive copies of the documents located by the government, but information about other students or other persons named in the documents (other than alleged perpetrators of abuse) will be blacked out to protect each person's personal information, as required by the Privacy Act.

The government will also gather documents about the residential school the Claimant attended, and will write a report summarizing those documents. The report and, upon request, the documents will be available for the Claimant or their lawyer to review.

In researching various residential schools to date, some documents have been, and may continue to be, found that mention sexual abuse by individuals other than those named in an application as having abused the Claimant. The information from these documents will be added to the residential school report. Again, the names of other students or persons at the school (other than alleged perpetrators of abuse) will be blacked out to protect their personal information.

The following documents will be given to the adjudicator who will assess a claim:

- documents confirming the Claimant's attendance at the school(s);
- documents about the person(s) named as abusers, including those persons' jobs at the residential school, the dates they worked or were there, and any sexual or physical abuse allegations concerning them;
- the report about the residential school(s) in question and the background documents; and,
- any documents mentioning sexual abuse at the residential school(s) in question.

With respect to student-on-student abuse allegations, the government will work with the parties to develop admissions from completed examinations for discovery, witness or alleged perpetrator interviews, or previous DR or IAP decisions relevant to the Claimant's allegations.

## APPENDIX IX: INSTRUCTIONS FOR ADJUDICATORS

### I. APPLICATION OF THE COMPENSABLE CLAIMS CRITERIA

In this IAP, compensation will be paid for all proven continuing claims, but not otherwise.

It is the adjudicator's responsibility to assess the credibility of each allegation, and, for those allegations which are proven on the civil standard, to determine whether what has been proven constitutes a continuing claim under this IAP.

The criteria for a continuing claim flow from, but may differ from, established case law on vicarious liability and negligence. Adjudicators are not to have reference to case law on vicarious liability or negligence. The compensability of proven continuing claims must be determined only by reference to the terms of this IAP, including instructions issued pursuant to it.

#### A. Physical or Sexual Abuse Committed by an Adult

##### 1. Where the victim was a student or resident

Where a sexual or physical assault was committed on a resident or student of an IRS by an adult, the following tests must be met:

- a) Was the alleged perpetrator an adult employee of the government or a church entity which operated the IRS in question? If so, it does not matter whether their contract of employment was at that IRS.
- b) If the alleged perpetrator was not an adult employee, were they an adult lawfully on the premises?
- c) Did the assault arise from, or was its commission connected to, the operation of an IRS? This test will be met where it is shown that a relationship was created at the school which led to or facilitated the abuse. If the test is met, the assault need not have been committed on the premises.

##### 2. Where the victim was not a student or resident

Where a sexual or physical assault was committed by an adult on a non-student, the following tests must be met:

- a) Was the alleged perpetrator an adult employee of the government or a church entity which operated the IRS in question? If so, it does not matter whether their contract of employment was at that IRS.

- b) If the alleged perpetrator was not an adult employee, were they an adult lawfully on the premises?
- c) Was the Claimant under the age of 21 at the time of the assault?
- d) Did an adult employee give the Claimant permission i) to be on the premises ii) for the purpose of taking part in school activities?
- e) Did the assault arise from, or was it connected to, the operation of the school? This test will be met where it is shown that a relationship was created at the school which led to or facilitated the abuse. If the test is met, the assault need not have been committed on the premises. The permission to be on the premises for an organized activity creates the circumstances in which an assault may be compensable if the other tests are met, but it does not also circumscribe the location in which an assault must have been committed to qualify as one which arose from or was connected to an IRS.

#### B. Sexual or Physical Assaults Committed by a Student

Where a proven incident of predatory or exploitative sexual abuse at levels SL4 or SL5 was committed by another student, the following tests must be met:

- a) Did the assault take place on IRS premises?
- b) Was the sexual assault of an exploitative or predatory nature?
- c) Has the government failed to prove that reasonable supervision was in place at the school?

In this connection:

A sexual assault is deemed to have been predatory or exploitative where the perpetrator was significantly older than the victim, or where the assault was occasioned by threats, coercion or violence.

For greater certainty, the fact of a sexual assault having taken place at an IRS does not itself prove that reasonable supervision was not in place.

In all other instances where a defined sexual assault (including those at the SL4 or SL5 level which are not predatory or exploitative) or a defined physical assault was proven to have been committed by another student, the following tests must be met:

- a) Did the assault take place on school premises?



- b) Did an adult employee of the IRS have, or should they reasonably have had, knowledge that abuse (i) of the kind proven was occurring at the IRS (ii) at the relevant time period?
- c) Did an adult employee at the IRS fail to take reasonable steps to prevent the assault?

### C. Additional Instructions re Physical Assaults

1. Since a physical injury is required to establish a compensable physical assault in this IAP, a need for medical attention or hospitalization to determine whether there was an injury does not establish that the threshold had been met.
2. 'Serious medical treatment by a physician' does not include the application of salves or ointment or bandages or other similar non-invasive interventions.
3. Loss of consciousness must have been directly caused by a blow or blows and does not include momentary blackouts or fainting.
4. Compensation for physical abuse may be awarded in this IAP only where physical force is applied to the person of the Claimant. This test may be deemed to have been met where:

-the Claimant is required by an employee to strike a hard object such as a wall or post, such that the effect of the force to the Claimant's person is the same as if they had been struck by a staff member;

provided that the remaining standards for compensation within this IAP have been met.

### D. Other Wrongful Acts

This category is intended to provide compensation for wrongful acts not listed within the Compensation Rules which have caused the defined level of psychological consequential harms. If the basis for a claim being asserted in this category is described in another category, the latter must be applied to the claim.

Because of the novel nature of these claims, and the importance of establishing a clear causal connection between such acts and the defined level of psychological consequential harms, these claims are handled only in the complex issues track.

For the purpose of this category, a wrongful act, other than the specified act of physical abuse of grossly excessive duration and frequency, is one which

- a) was committed by an adult employee or another adult lawfully on the premises,

- b) is outside the usual operational practices of the IRS at the time in question, and,
- c) exceeds recognized parenting or caregiving standards at the time.

Once an act or series of acts have been found to be wrongful, and not to be captured in another part of the Compensation Rules, then unless the parties consent to the contrary, the adjudicator must order the psychiatric or medical reports necessary to determine whether harms at the H4 or H5 level were caused by the act or acts.

In all OWA claims, the standard for proof of causation and the assessment of compensation within the Compensation Rules is the standard applied by the courts in like matters.

## II. APPLICATION OF THE COMPENSATION RULES

Compensation for proven continuing claims is to be determined exclusively pursuant to the Compensation Rules. The Rules are designed to ensure that compensation is assessed on an individualized basis. While the abuse suffered is an important indicator of the appropriate level of compensation, so too are the circumstances in which the abuse was suffered by the individual, and the particular impacts it had on him or her.

The Compensation Rules were expressly designed to avoid a mechanistic approach to compensation by recognizing that a relatively less serious act can have severe consequences, and vice versa. They accomplish this goal by requiring both an objective assessment of the severity of the abusive act, and then a distinct and highly subjective assessment of how that act affected the individual Claimant. Accordingly, the categories defining acts and harms must be assessed separately, and the words in each category must be read purposively within their respective contexts.

In particular, in determining the level of harm suffered by a Claimant, adjudicators are to consider each of the five categories as a whole, and in relation to the other categories, rather than focussing on isolated words within a given category. This IAP calls for a contextual consideration, having particular regard to the headings for each category, in order to determine which of the categories best reflects the Claimant's proven level of harms resulting from compensable abuse.

### 1. The Proven Acts

The first step in applying the framework is to determine which acts of abuse have been proven on the civil standard of proof. The most serious act or acts of proven abuse, whether physical or sexual, determines the single range within which points for all abusive acts suffered over the course of attendance at one or more residential schools are to be assigned. Multiple acts of either physical or sexual abuse are recognized in the definitions of the categories of abuse; the impact of sexual abuse being accompanied by physical abuse is dealt with later as an aggravating circumstance.

Once the most serious category among the proven act categorizations has been determined, a point total will be assigned within that category's range. The adjudicator has the discretion to choose the point level within that range, having regard to the relative seriousness of the proven acts compared to the acts listed within that category. For example, in the category of nude photographs it is expected that a single photo of nude buttocks retained by the photographer would be assigned fewer points for the act itself than a series of highly sexualized photos which had been put into wide distribution. The potential for an individual to suffer a high degree of trauma from an objectively less serious act is recognized, but is to be addressed in the harms categories within the framework, rather than by increasing the points otherwise appropriate for the act itself.

## 2. Consequential Harms

After the assignment of points for the proven acts has been determined, the next step is to assess any proven consequential harms which flowed from the proven acts, including those which were subsumed for the purpose of assigning points to the acts. This is done by reference to the consequential harms categories.

A Claimant must provide evidence or there must be expert evidence to prove each asserted harm on the balance of probabilities. In the standard track, once a compensable act and a compensable harm have each been established on the evidence according to a balance of probabilities, only a plausible link between them need be established in order for compensation to be awarded for them. A finding of a plausible link does not require the negation of other potential causes of harms, but it must be based on or reasonably inferred from the evidence led in the case rather than assumptions or speculation as to possible links. Adjudicators shall have regard to their powers under Appendix X, below.

In the complex issues track, harms must be proven to have been caused by one or more continuing claims, and compensation must be assessed within the Compensation Rules, using the same standards a court would apply in like matters.

Harms not proven to be linked to or caused by acts constituting compensable abuse may not be taken into account in assessing points in the harms categories.

Harms up to and including H3 are not to be the subject of expert assessments, although treatment notes and clinical records from treating doctors or counsellors, or if such are not available, a report from treating doctors or counsellors may be relied upon to supplement or contradict the Claimant's evidence of harms suffered. Where a Claimant's evidence credibly establishes the abuse plus apparent harms at levels 4 or 5, or on the joint recommendation of the parties before the hearing, the adjudicator may order an expert assessment. Only where such an assessment has been obtained and considered, or where the parties consent to points at these levels being considered without such an assessment, may the adjudicator find that harms at the two highest levels have been proven and were caused by the proven abuse.

Points for consequential harm are assessed only once, at the level of harm which best reflects the evidence in the case and the causation standards of this IAP. Within the range for that level, the adjudicator has the discretion to determine the points to be assigned. Again, the relative gravity of the harm within the appropriate category will determine where within the applicable range the points should be assigned.

### 3, Aggravating Circumstances

The adjudicator must then determine whether any of the listed aggravating factors have been proven on the civil standard of proof. Only the specific aggravating factors listed in this IAP may be taken into account in assessing this category. Provided such factors are specifically proven, and are proven to have made the compensable abuse worse, they may be taken into account whether or not they were coincident in time and place with such abuse.

Once these tests have been met, the adjudicator has the discretion to determine a percentage to be added for one or more proven aggravating factors collectively. This discretion is to be exercised having regard to the seriousness of the aggravating factor in the specific context in which it occurred, including the impact the factor actually had on the Claimant. No other aggravating factors may be considered.

The percentage for aggravating factors is then applied to the total of the points assigned for the acts and the harms. The resulting number of points for aggravating factors is then rounded up to the nearest whole number.

### 4. Consequential Loss of Opportunity

Where the Claimant has asserted that the abuse caused them to suffer a consequential loss of opportunity, the adjudicator will then consider that part of the claim. Two aspects must be taken into account. First, the Claimant must prove, on the civil standard of proof, one or more of the circumstances or experiences listed in this part of the Rules, with expert evidence being required to establish the harms leading to the losses at levels 4 or 5 unless the parties have agreed to dispense with it. Second, in the standard track he or she must convince the adjudicator that there is a plausible link between the abuse proven to have occurred at the IRS, and the proven subsequent experience. In the complex track, consequential loss of opportunity must be proven to have been caused by one or more continuing claims, and compensation must be assessed within the Compensation Rules, using the standards a court would apply in like matters.

Where this proof is established, the adjudicator will then select the range of points reflecting the most serious proven loss linked to the abuse according to the standards for the track in question, and assign a point total within that range. Within the appropriate range the adjudicator will assign points based on the relative seriousness within the category of the proven experiences.

It is important to note that consequential loss of opportunity within the compensation framework is not intended as a surrogate for a loss of income claim. Actual income loss claims constitute a distinct basis for compensation within this IAP, and the standards for their assessment do not apply to consequential loss of opportunity claims.

#### 5. Actual Income Loss

Except on consent, actual income loss claims must be determined on the basis of expert evidence. The link between any proven actual income losses and the proven continuing claim must be established, and compensation must be assessed, using the same standards a court would apply in like matters.

Actual income loss claims are an alternative to a claim for consequential loss of opportunity, and both cannot be awarded.

#### 6. Assessment of Compensation

All points assigned will now be totalled. This total determines the dollar range within which compensation can be awarded (except for the actual income loss element of an award), but it does not determine where within that range the adjudicator will award compensation. While a higher number of points within a range will normally lead to a higher level of compensation, the adjudicator has the discretion to determine compensation within the applicable dollar range having regard to the totality of the proven facts and impacts.

#### 7. Future Care

Finally, where a claim has been made for future care, the adjudicator will consider whether to award additional compensation within and according to the criteria in the Compensation Rules. Relevant factors here will include the impacts of the proven abuse on the individual; any treatment already received for those impacts; the availability of treatment in the Claimant's home community and the need for assistance with travel costs; and the availability of alternative sources of funding for parts of the plan.

No award for future care shall be made unless the adjudicator is satisfied that the Claimant has a need for treatment of the kind proposed, and a genuine desire to use the funding for that purpose. In most cases, this will be evidenced by a treatment plan and an articulated and credible determination to follow that plan.

## 8. Conclusion

The compensation framework is designed to provide an individual assessment of abuse suffered and its impact to generate compensation levels consistent with or more generous than court awards in each jurisdiction, using in a systematic and transparent way the factors applied by the courts. In the interests of fairness and consistency, all adjudicators must follow these instructions in applying the framework to the cases before them.

## APPENDIX X: THE USE OF EXTRA-CURIAL KNOWLEDGE BY ADJUDICATORS

### INTRODUCTION

A number of issues will arise concerning the ability of adjudicators to make use of information obtained or known beyond that provided by the parties in each individual case. There are several aspects to this matter:

- use of background information and/or personal knowledge, for example on
  - schools
  - child abuse and its impacts
  - the residential school system
- carry-forward of information from hearing to hearing, for example on
  - alleged perpetrators and the *modus operandi* of proven perpetrators
  - conditions at a school
  - credibility findings
- use of precedents from other adjudicators
- ability of adjudicators to confer

The approach to be taken to these issues is set out below, by reference to the source of the information in question.

#### 1. Orientation Materials Provided to Adjudicators

Adjudicators will be supplied with orientation materials on the residential school system and its operations, as well as on child abuse and its impacts.

If any of the orientation materials are specifically identified as containing uncontested facts or opinions, they may be used as follows:

Adjudicators are expected to inform themselves from this material. They may use it to question witnesses, but also to make findings of fact and to support inferences from evidence they find credible, for example to conclude that trauma of a certain kind can be expected to flow from a sexual assault on a child. These latter uses of this information are justified by the fact that representatives of all interests have agreed to its inclusion in the orientation materials for this use, and all participants in a hearing will have access to the orientation materials.

Wherever possible the adjudicator should use the information at the hearing to formulate questions to any witnesses who may be able to

comment on it, or whose testimony it may contradict, support, or help explain. Where this is not possible, the proposed use in reaching a decision should be identified to the parties at the hearing to give them a chance to comment on it in their submissions, but so doing is not a condition precedent to the proposed use.

Where the material is used in coming to a finding of fact, or drawing an inference, it should be cited and its relevance and the rationale for its use set out in the decision.

Where orientation information provided to adjudicators does not represent uncontested facts or opinions, it may be used by adjudicators as follows:

Adjudicators may use this category of orientation materials as a basis for questioning witnesses, or testing the evidence, but may not rely on it as an independent basis for their conclusions of fact or their assessment of the actual impact of abuse on an individual.

## 2. Personal Knowledge of Abuse and its Impacts

Some adjudicators may bring to the job an extensive background in dealing with child abuse, or may receive information on child abuse and its impacts at training sessions or continuing education programs, or through their own reading or research.

The approach to the use of this kind of information is as follows:

Adjudicators may use their personal knowledge, training they have received, or general educational materials, as a basis for questioning witnesses, or testing the evidence, but may not rely on them as an independent basis for their conclusions of fact or their assessment of the actual impact of abuse on an individual.

## 3. Document Collections

Adjudicators will be provided with Canada's, and potentially a church's, document collection on each school for which they are holding hearings. This material will also be available to Claimants and their counsel.

The approach to the use of this kind of information is as follows:

Adjudicators are expected to inform themselves from this material, which may be used as a basis for findings of fact or credibility. Where any of it is so used by adjudicators, it must be cited and its relevance and the rationale for use set out in the report.

Because this information is specific to the school in question and is provided in advance, it is expected that adjudicators will be familiar with it



before starting a hearing to which it is relevant. Given this, before relying on specific documents to help decide a given case, the adjudicator should seek the consent of the parties, or put the relevant extracts to any witnesses who may be able to comment on them, or whose testimony they may contradict or support. Where there are no such witnesses, or where one or more parties contest the use of the documents, the adjudicator may still use them in his or her decision, but wherever possible should advise the parties of the proposed use of the document so that they may address it in their submissions.

#### 4. Previous findings

Adjudicators will hear evidence about, and make findings of fact about, the operations of various schools, their layouts, the conditions that pertained in them, the acts and knowledge of adult employees, and where an individual is found to have committed a number of assaults in a particular way, their *modus operandi*.

The approach to the use of this kind of information is as follows:

Adjudicators must treat each individual's claim as a unique claim to be determined on the evidence presented, plus information expressly permitted to be used according to the guidelines agreed to for this process. They may not carry forward, much less be bound by, previous findings they have made, including findings of credibility.

They may, though, use information from previous hearings to inquire about possible admissions, or failing that, to question witnesses. This ability to bring forward information from previous hearings for these specific purposes flows from the fact that this IAP is not a party-controlled adversarial process. Instead, the inquisitorial model is being used to have adjudicators inquire into what happened, using their skills and judgment to question witnesses to determine the facts.

While it would not be fair to base a decision on evidence from a previous hearing, since some or all of the parties would not know its context, and would be unable to challenge its reliability, it is also not appropriate to insist that adjudicators act as if each case were their first one. Their job requires them to test evidence and determine what happened. While they cannot call witnesses, it is their duty to question them, and they must be free to pose questions and follow lines of inquiry they believe to be relevant. Whether that belief flows from common sense, instinct, or something heard at another hearing, it is appropriate as a basis of inquiry, although, in the absence of an admission, not as evidence.

5. Stare decisis

Although reasons will be issued in each case, the IAP will not operate on the basis of binding precedent. All adjudicators are of equal authority, and should not consider themselves bound by each other's previous decisions. Through conferencing, adjudicators may come to a common interpretation of certain procedural issues, but each case must be determined on its own merits.

## APPENDIX XI: TRANSITION FROM LITIGATION OR ADR PROJECTS, AND PRIORITIES FOR ACCESS TO THE IAP.

All IRS Claimants who meet the criteria for this IAP may apply to it for the validation of their claim except:

1. Claimants who have settled their IRS claim, whether in the litigation stream or the existing DR, except as provided for in the transition rules established by the Class Action Judgments.
2. Claimants whose claims have been dealt with at trial.

For greater certainty, participation in unsuccessful resolution discussions with the Government or a church in an attempt to settle claims does not preclude access to the IAP. Only where one of the above conditions applies will an application to enter the new process be rejected.

### Rules for Pre-existing Evidence

Where a Claimant who has given evidence in a previous IRS proceeding in a pilot project, or in a hearing under the DR Model or this IAP (where a new hearing has been ordered following a review), or in litigation proceedings (including answers to interrogatories or participation in an examination for discovery), wants to and is eligible to enter the IAP:

- (i) the record of the previous evidence must be provided to the adjudicator in the IAP, who may use it as a basis to question the Claimant;
- (ii) the Claimant must appear before the adjudicator to give evidence, if a hearing is held;
- (iii) the Claimant may adopt their previous evidence rather than provide a narrative account at the hearing;
- (iv) the Claimant is subject to questioning by the adjudicator on the same basis as other Claimants.

The fact that a case is transferred from litigation where documentary rules are different does not change the kinds of documents permitted in proceedings under the IAP. For greater certainty, the only expert assessments permitted in this IAP are those conducted by an agreed-upon expert on the order of, and under the direction of, an adjudicator.

### Potential for Expediting the Transfer

To expedite transition to the new system, and reduce the burden of completing an application in circumstances where the Claimant has already given evidence, counsel for

the Government and the claimant should endeavour to develop an agreed statement of fact on some or all of the issues based on the evidence given.

Phasing of Acceptance into the IAP

In considering applications to the IAP, including applications to the DR Model which are transferred to the IAP, priority will be given, in order, to:

- a) Applications from persons who submit a doctor's certificate indicating that they are in failing health such that further delay would impair their ability to participate in a hearing;
- b) Applications from persons 70 years of age and over;
- c) Applications from persons 60 years of age and over;
- d) Persons who have completed examinations for discovery;
- e) Persons who are applying as members of groups.

Among persons in categories d or e, above, the health of any alleged perpetrator who has indicated they will give evidence at a hearing may be used to establish priority.

## APPENDIX XII: FORMAT FOR DECISIONS

Adjudicators must produce a decision outlining and supporting their findings in each case. To help ensure consistency, fairness and efficiency, these decisions must be prepared in a standard format.

The decisions are primarily to explain to the parties how the adjudicator's decision was reached, but they must also support and facilitate consultation among adjudicators, and review for error.

The format does not contemplate a narrative exposition of the evidence heard. Instead, it requires a focus on findings, and the rationale for those findings. A transcript of the evidence will be available for Claimants who wish a record of their testimony; it is not the purpose of the report to provide such a record. Similarly, the transcript will be available for a review; the evidence need not be summarized in the decision for those purposes.

While an arbitrary page limit will not be set, it is expected that most decisions will be in the range of 6-10 pages. The approved format is as follows:

### A. Summary

1. Summary of allegations
2. Summary of conclusions

### B. Decision

Where the claim was proven in whole or in part state the compensation awarded. Where the claim is not established, state that it is dismissed.

### C. Analysis

1. Outline each specific allegation or linked series of allegations, and set out the findings of fact pertinent to it. Do not outline the evidence as a whole.
2. In making findings for each abuse allegation or series of linked abuse allegations:
  - a. if the evidence was uncontradicted, indicate whether, and the basis on which, it was found credible or not credible, or
  - b. if there was conflicting evidence, indicate which evidence was found credible and why, and
  - c. having regard to the evidence found credible, outline whether, and the basis on which, the civil standard of proof was found to have been met, or not met.

3. Having regard to the proven allegations as a whole, outline the harms, impacts and aggravating factors found, or not found, to have been established on the civil standard of proof, along with the basis for those findings. For the proven harms and impacts, indicate whether, and on what evidence, the Claimant has established causation of the proven harms as required under this IAP.
4. In relation to the proven acts, and the proven and plausibly-linked harms and impacts, outline the calculation of compensation by indicating:
  - a. The most serious proven acts, the applicable range, and the rationale for the points assessed within the applicable range
  - b. The most serious proven harms for which causation pursuant to this IAP has been proven, the applicable range, and the rationale for the points assessed within the applicable range.
  - c. The proven aggravating factors, and the rationale for the percentage found appropriate.
  - d. The most serious proven opportunity loss for which causation pursuant to this IAP has been proven and the rationale for the points assessed within the relevant category.
  - e. In the case of an actual income loss assessment, the evidence and caselaw relied upon for the assessment.
  - f. Findings and rationale for any future care compensation assessed.

APPENDIX XIII TO THE IAP: APPOINTMENT PROCESSES AND TRANSITION PROVISIONS FOR THE OVERSIGHT COMMITTEE, THE CHIEF ADJUDICATOR AND THE ADJUDICATORS

**Former IRS Student Representatives on the Oversight Committee**

The AFN shall designate one former student to serve on the Oversight Committee, and another to serve as an alternate, as shall collectively the Inuit organizations which under the Settlement Agreement have a representative on the NAC.

Default

In the event that the designations are not made, the NCC (once established, the NAC) shall make the appointment or appointments, following consultations with representative aboriginal organizations.

**Plaintiff Counsel Representatives on the Oversight Committee**

The plaintiffs' counsel bodies represented on the NCC shall designate the first two plaintiffs' counsel to serve on the Oversight Committee, plus one alternate, with subsequent designations being made by the plaintiffs' counsel bodies represented on the NAC.

In the event that the designations are not made, the NCC (once established, the NAC) shall make the appointments.

**Church Representatives on the Oversight Committee**

The denominations which are a party to the Settlement Agreement shall collectively designate two representatives, plus one alternate, to serve on the Oversight Committee.

In the event that the designations are not made, the NCC (once established, the NAC) shall make the appointments.

**Government of Canada Representatives on the Oversight Committee**

The government shall designate two representatives plus one alternate to serve on the Oversight Committee.

**Neutral Chair of the Oversight Committee**

The first chair shall be a person nominated by the Hon. Frank Iacobucci and approved by at least 6 members of the NCC. Subsequent chairs shall be a person nominated by the outgoing chair and approved by at least 6 members of the NAC. If a chair dies or is incapacitated before making a nomination, the nomination shall be made by majority vote of the Oversight Committee.

## **Chief Adjudicator and Adjudicators**

The government shall issue RFPs for the positions of Chief Adjudicator and Adjudicators for the IAP, following the applicable recruitment processes for positions of this kind. For the first recruitment process, the terms of the RFPs shall be substantially the same as the terms used to recruit similar positions under the DR Model. Any proposed changes from those terms shall be discussed with the NCC before being adopted. For subsequent recruitments, the RFPs shall be on terms which are substantially the same as the terms of the first RFPs, with any proposed changes being discussed with the NAC.

### Chief Adjudicator

The Chief Adjudicator shall be chosen by the unanimous agreement of a selection board composed of one representative of each of former students, plaintiffs' counsel, church entities, and government. These members of the selection board shall be appointed by the representatives of those interests serving on the Oversight Committee when the appointment is to be made.

### Adjudicators

The adjudicators, other than adjudicators previously appointed for the DR Model, shall be chosen by the unanimous agreement of a selection board composed of one representative of each of former students, plaintiffs' counsel, church entities, and government. These members of the selection board shall be appointed by the representatives of those interests serving on the Oversight Committee when the appointment is to be made. The selection board shall conduct its interviews and make its selections with the non-voting participation of the Chief Adjudicator or his or her designate. More than one selection board may be appointed to operate concurrently.

## **Transition**

Until the conclusion of the above competitions, the Chief Adjudicator under the DR Model and any of the Process A adjudicators designated for the purpose by the Chief Adjudicator shall discharge the corresponding functions under the IAP. For greater certainty, existing DR Model adjudicators must compete for ongoing appointments under the IAP, but may continue to hear DR matters until the expiry of their appointments thereunder.

Adjudicators appointed for the DR Model who apply to become IAP adjudicators shall be chosen by a selection board composed of one representative of each of former students, plaintiffs' counsel, church entities, and government. These members of the selection board shall be appointed by the representatives of those interests serving on the Oversight Committee when the appointment is to be made. More than one selection board may be appointed to operate concurrently.

The selection board shall conduct its interviews and make its selections with the non-voting participation of the Chief Adjudicator or his or her designate. If a decision cannot



FINAL: MAY, 2006

be reached by consensus, the Chief Adjudicator or designate may vote, with four affirmative votes being required for the selection of a candidate.

Designations of representatives for the Oversight Committee shall be made, and the neutral chair shall be selected, within 60 days of the date of the last of the Approval Orders.

The Chief Adjudicator Reference Group established for the DR Model shall act as the Oversight Committee until the latter is established

[Click here](#) if you would like to see a draft of the IAP Application Form.

**The IAP Application Form is a DRAFT only and cannot be printed; a final version for the form will be made available following the approval and implementation of the Settlement Agreement.**